

Appl. No. 10/054,825
Amdt. Dated: March 10, 2005
Reply to Office Action of December 13, 2004

• • R E M A R K S / A R G U M E N T S • •

The Official Action of December 13, 2004 has been thoroughly studied. Accordingly, the following remarks are believed to be sufficient to place the application into condition for allowance.

Inasmuch as the outstanding prior art rejections of the claims are deemed to be improper, no amendments to the claims are being presented herein.

Claims 1-11 are pending in this application.

Claims 1-8 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,699,228 to Chmielewski et al.

Claims 9 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Chmielewski et al. in view of Japanese reference No. JP 1996-19565 to Onishi et al.

For the reasons set forth below it is submitted that all of the pending claims are allowable over the prior art relied upon by the Examiner and therefore, the outstanding rejections of the claims should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

The Examiner has relied upon Chmielewski et al. as disclosing a diaper that:

...as shown in figure 1, comprising a primary absorbent batt assembly 34, a pair of barrier cuffs 501, and a supplementary absorbent batt assembly 70. The primary absorbent batt assembly 34 has a body facing surface sheet 30, a garment facing surface sheet 32, a front waist region 22, a rear waist region 24, and a crotch region 26. The barrier cuffs 501 have a proximal edge portion 304 and a distal edge portion 503, and extend along transversely opposite sides of the primary absorbent batt

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assembly 34 so as to rise up from the body facing surface, as shown in figure 2. The supplementary absorbent batt assembly 70 has a body facing surface 704 and an opposite surface 706, as shown in figure 2. The supplemental absorbent batt assembly 70 also has a proximal end portion 724 and a distal end portion 728, as shown in figure 1, the proximal end portion laying the front waist region 22. The distal end portion 728 is spaced apart upwardly from the primary absorbent batt assembly 34 to define a pocket opening 80 when under tension from the barrier cuffs 501, as shown in figure 3.

In relying upon Chmielewski et al. The Examiner has taken the position that:

It would have been obvious....to space the opposite side edges of the supplementary absorbent batt assembly being spaced apart upward from the body facing surface of the primary absorbent batt assembly, since the application has not shown that this configuration serves any stated purpose or solves any stated problem.

The Examiner goes on to state:

It appears that the invention would perform equally well with the opposite side edges of the supplementary absorbent batt assembly being spaced slightly apart from or attached to the body facing surface of the primary absorbent batt assembly, since either configuration allows for the formation of a pocket between the supplementary and primary batt assemblies, thus allowing the invention to perform equally well either way.

At column 3, lines 49-59 Chmielewski et al. teaches:

During manufacturing, the lower absorbent structure preferably has a curved contour about the longitudinal axis imparted thereto at the time that the corners at the rear edge of the upper absorbent structure are secured to the lower topsheet. The curvature imparted to the lower absorbent structure tends to facilitate the opening of the arch-shaped waste containment pocket. The curvature on the lower absorbent structure predisposes the upper and lower absorbent structures to separate from one another even in the absence of elastics at the distal end of the inner pair of waste containment flaps.

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At column 14, lines 6-11 Chmielewski et al. teaches:

The lower absorbent core 34 is wrapped around the curved lower portion 752 of the template 750 as the garment is being manufactured in the machine direction (MD). The upper absorbent structure 70 is then attached along its edges 720, 722 to the lower topsheet panel 301 and the template is removed.

At column 14, lines 12-23 Chmielewski et al. teaches:

It has been discovered that it is more effective to apply the curvature to the lower absorbent structure than to the upper absorbent structure 70. However, it is possible and within the scope of the preferred embodiments to use a template similar to that of FIG. 8, but reversed so that the curvature faces upwards. In this case, the upper absorbent structure 70 is wrapped therearound. It has also been discovered that once the lower absorbent core 34 has been curved around template 750 such that an arch-shaped pocket opening 80 is formed between the end 728 of the upper absorbent structure 70, the inner pair of leg gathers 708 attached to the upper absorbent structure 70 may be removed altogether.

From the above, a careful reading of Chmielewski et al. clearly reveals that Chmielewski et al. relies upon: 1) the difference in widths of the upper and lower absorbent structures 70 and 34; and 2) the manner in which the upper and lower absorbent structures 70 and 34 are attached long their edges (as shown in Fig. 2) to cause the upper and lower absorbent structures 70 and 34 to be spaced apart and form pocket opening 80.

Applicants' claimed invention requires in part that the distal end portion of the supplementary absorbent batt is "supported along transversely opposite side edges....by portions of said distal edge portions of said barrier cuffs....with at least said distal end portion and said opposite side edges of said supplementary absorbent batt assembly spaced apart upwardly from said body facing surface of said primary absorbent batt assembly under tension of said barrier cuffs.

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The Examiner contends that it would have been obvious to modify Chmielewski et al. to:

...space the opposite side edges of the supplementary absorbent batt assembly being spaced apart upward from the body facing surface of the primary absorbent batt assembly

In order to provide such spacing between the upper and lower absorbent structures 70 and 34 of Chmielewski et al. it would be necessary to eliminate the "lines of attachment 726" which are shown in Fig. 2.

In such a case the tension in the "curved" absorbent structure would cause the side edges thereof to push outward. The affect would be to eliminate or at least reduce the "curve" structure that Chmielewski et al. relies upon to maintain pocket opening 80.

It accordingly follows that such a modification would be improper as it would clearly destroy the teachings of Chmielewski et al.

Note, as held by the Board of Patent Appeals and Interferences in *Ex parte Hartmann*:

References cannot properly be combined if effect would destroy invention on which one of reference patents is based. *Ex parte Hartmann*, 186 USPQ 366 (PTO Bd App 1974)

The holding in *Ex parte Hartmann* is that obviousness cannot be established when a proposed modification to a reference destroys the teachings of the reference.

In the present situation, it is improper to suggest that it would have been obvious to modify Chmielewski et al. in the manner which the Examiner purports to be obvious under 35 U.S.C. §103.

The Examiner's comments that:

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It appears that the invention would perform equally well with the opposite side edges of the supplementary absorbent batt assembly being spaced slightly apart from or attached to the body facing surface of the primary absorbent batt assembly, since either configuration allows for the formation of a pocket between the supplementary and primary batt assemblies, thus allowing the invention to perform equally well either way.

This comment is clearly based upon applicants' own disclosure since the Examiner has failed to rely upon a prior art teaching of the alternative "configuration" discussed.

In any event, it is clear that Chmielewski et al. relies upon a particular structure that requires: 1) differences in widths of the upper and lower absorbent structures 70 and 34; and 2) the manner in which the upper and lower absorbent structures 70 and 34 are attached along their edges (as shown in Fig. 2) to cause the upper and lower absorbent structures 70 and 34 to be spaced apart and form pocket opening 80.

This combination of structure and associated function is completely different from applicants' claimed invention.

The Examiner has relied upon Onishi et al. as teaching a second supplementary absorbent core.

Onishi et al. do not address or overcome the differences between Chmielewski et al.

Accordingly the combination of Chmielewski et al. and Onishi et al. does not render applicants' claimed invention obvious.

On page 5 of the Office Action the Examiner indicates that the pending claims do not recite that the supplemental absorbent batt assembly is attached to the barrier cuffs.

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Independent claim 1 recites in part that the distal end portion (6d) of the supplementary absorbent batt (6) is "supported along transversely opposite side edges (6e)....by portions of said distal edge portions (7b) of said barrier cuffs (7)....with at least said distal end portion (6d) and said opposite side edges (6e) of said supplementary absorbent batt assembly (6) spaced apart upwardly from said body facing surface (S3) of said primary absorbent batt assembly (3) under tension of said barrier cuffs(7)." (Note: reference numbers added and reference made to Fig. 3.

Chmielewski et al. does not teach that the side edges 720 of the upper absorbent structure are "supported" by leg gathers 708 or that the upper absorbent structure is spaced upward "under tension" of the leg gathers 708.

Accordingly, Chmielewski et al. fails to teach or render obvious the limitations recited in independent claim 1.

Based upon the above distinctions between the prior art relied upon by the Examiner and the present invention, and the overall teachings of prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon the prior art as required under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

It is, therefore, submitted that any reliance upon prior art would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejections of the claims should hence be withdrawn.

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Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

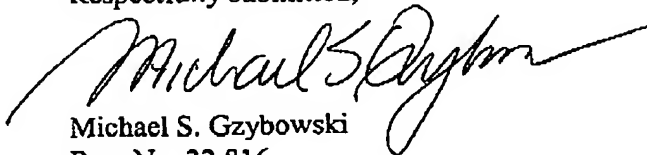
It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

The prior art cited, but not relied upon, on page 5 of the Official Action has been considered, but is not believed to be particularly relevant to applicants' invention.

If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved; the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,



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